

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN HENRY JACKSON,

Plaintiff,

Case No. 1:09-cv-509

v.

Honorable Robert Holmes Bell

PATRICIA CARUSO et al.,

Defendants.

ORDER GRANTING RELIEF FROM JUDGMENT

This is a civil rights action brought by a state prisoner under 42 U.S.C. § 1983. Plaintiff's action was transferred from the Eastern District of Michigan on June 3, 2009. On June 19, 2009, this Court entered an order (docket #9) granting Plaintiff's request to proceed *in forma pauperis* and requiring Plaintiff to pay an initial partial filing fee of \$16.68 under 28 U.S.C. § 1915(b)(1). The Court allowed thirty days for Plaintiff to comply. Plaintiff was warned that if he failed to comply, his action may be dismissed without prejudice. Because Plaintiff failed to comply with the Court's order, the Court entered a judgment dismissing his action without prejudice (docket #12) on August 14, 2009.

The matter presently is before the Court on Plaintiff's motion for relief from judgment under FED. R. CIV. P. 60(b) (docket #13). A Rule 60(b) motion may be granted only for certain specified reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud, mis-representation, or the like; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed

or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. When none of the first five enumerated examples of Rule 60(b) apply, relief may only be available when exceptional or extraordinary circumstances are present. *Cincinnati Ins. Co. v. Byers*, 151 F.3d 574, 578 (6th Cir. 1998).

In his motion, Plaintiff argues that he paid the initial partial filing fee. Plaintiff attached his prisoner trust account statement to his motion. Upon review of Plaintiff's trust account statement, the Court finds that the MDOC withdrew Plaintiff's initial partial filing fee of \$16.68 on July 13, 2009. (Attach. to Mot., Page ID #100, docket #13-1.) While the monies were withdrawn by the MDOC within the thirty days required by the June 19, 2009 order, they were not received by this Court prior to the August 14, 2009 judgment dismissing Plaintiff's case. Therefore, the Court will grant Plaintiff's motion. Accordingly,

IT IS ORDERED that Plaintiff's motion for relief from judgment (docket #13) is **GRANTED**.

IT IS FURTHER ORDERED that the judgment (docket #12) dismissing the action is **VACATED**.

IT IS FURTHER ORDERED that Plaintiff's case is **REOPENED**.

Dated: August 10, 2010

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE